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Paper No. 09

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AUG 20 2003

In re Application of: :  
Rogers, *et al.* : DECISION ON PETITION  
Application No. 09/825,027 : TO WITHDRAW HOLDING  
Filed: April 02, 2001 : OF ABANDONMENT  
Attorney Docket No.:AMD-E1019 :  
:

This is a decision on the petition filed August 12, 2003, to withdraw the holding of abandonment of the above-identified application for which no fee is required.

The request is granted.

The application was held abandoned for failure to respond to the Office action mailed on December 10, 2002. A Notice of Abandonment was mailed on June 17, 2003.

Petitioner asserts that a response including a petition for extension of time of three months with the required fee and a response to the Office action was filed in the above-identified application on March 17, 2003. To support this assertion, petitioner has provided a copy of a response including, *inter alia*, a petition for extension of time of three months with the required fee, a response to the Office action, and a copy of a return postcard that properly identifies and acknowledges receipt of each of the above items by the United States Patent and Trademark Office (PTO) on March 25, 2003. The copy of the response bears a Certificate of Mailing under 37 CFR 1.8(a) showing a date of deposit with the United States Postal Service on March 17, 2003.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima*

*facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Additionally, the PTO fee records indicate that a fee for an extension of time of three months, in the amount of \$930.00, was received on March 25, 2003. As such, the evidence indicates that the response was received in the PTO on March 25, 2003, but lost after receipt thereof.

For the above-stated reasons, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

Petitioner please note that the fee records for the above identified application show that there was a \$130.00 check posted to the account on July 11, 2003, having a mail room date of July 09, 2003. If this fee was paid in error, please request a refund, in writing, for the above identified fee.

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response. From there, the application will be forwarded to the examiner for appropriate action.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (703) 308-2260.



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